

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of the Pay Telephone)	CC Docket No. 96-128
Reclassification and Compensation)	
Provisions of the Telecommunications)	
Act of 1996)	

**COMMENTS ON PETITIONS FOR
RECONSIDERATION, CLARIFICATION
AND/OR DECLARATORY RULING**

Introduction

Pursuant to the Commission's Public Notice,¹ Global Crossing Telecommunications, Inc. ("Global Crossing") submits these comments on the petitions for reconsideration, clarification and/or declaratory ruling of the Commission's Second Order on Reconsideration in the above-captioned proceeding.²

In their petitions, AT&T and WorldCom ask the Commission to declare that the payment of per-call compensation on a call that is handed-off to a facilities-based reseller ("FBR") where the FBR returns answer supervision is deemed complete even if the call does not ultimately reach the intended recipient.³ The Commission should deny these requests. Adopting the

¹ Public Notice, *Common Carrier Bureau Seeks Comment on Petitions for Declaratory Ruling, Reconsideration and/or Clarification of the Payphone Compensation Second Order on Reconsideration*, DA 01-1967 (Com. Car. Bur. Aug. 20, 2001) ("Public Notice").

² *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Dkt. 96-128, Second Order on Reconsideration, FCC 01-109 (April 5, 2001).

³ AT&T at 1-4; WorldCom at 2-4.

AT&T/Worldcom proposal would have two undesirable effects: (1) it would result in payphone service providers ("PSPs") being grossly overcompensated as they would be compensated for numerous uncompleted calls; and (2) it would put FBRs at a major competitive disadvantage by being forced to absorb the costs of paying compensation for all calls that are handed-off to them.

Second, given the impending date for the effectiveness of the Commission's new rules⁴ and the substantial uncertainty that the new rules have generated, the Commission should delay the effective date of the new rules until it has had an opportunity to address the merits of the petitions before it.

Argument

I. THE COMMISSION SHOULD DENY THE AT&T/WORLDCOM PETITIONS INsofar AS THEY SEEK A DETERMINATION THAT A CALL HANDED OFF TO AN FBR SHOULD BE DEEMED COMPLETED.

The Commission's rules -- as they now stand -- only require that compensation be paid to PSPs on calls that are actually completed to the intended recipient.⁵ Furthermore, the petitions submitted by AT&T, WorldCom

AT&T and WorldCom also ask the Commission substantially to modify the new reporting requirements adopted in the Second Reconsideration Order. AT&T at 4-7; WorldCom at 5-7. Global Crossing also requested that the Commission take comparable action Global Crossing at 8-9. Accordingly, Global Crossing concurs in the requests for relief in this respect advanced by AT&T and WorldCom.

For its part, Bulletins -- an aggregator -- requests that the Commission confirm that local exchange carriers are responsible for the payment of per-call compensation on intraLATA dial-around calls that they handle. Bulletins, *passim*. Global Crossing concurs in this request.

⁴ According to the Public Notice, the new rules are to become effective on November 23, 2001 (Public Notice at 1), barely seven weeks away.

⁵ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Dkt. 96-128, Report and Order, 11 FCC Rcd. 20541, ¶ 83 (1996).

and Global Crossing all make one point abundantly clear. When a call is handed-off by the originating interexchange carrier to an FBR, the originating carrier cannot tell if the call has actually been completed to the intended recipient.⁶ Thus, as Global Crossing explained,⁷ the new rules adopted by the Commission do not solve the underlying problem that the Commission identified. Because the definition of a completed call remains unchanged, the new rules decidedly will not eliminate controversy between carriers and PSPs as to whether PSPs are being appropriately compensated.

The solution proposed by AT&T and WorldCom would eliminate this controversy. Adoption of that proposal, however, would result in PSPs being grossly overcompensated and would place FBRs at a significant competitive disadvantage. The Commission, therefore, should decline to adopt the AT&T/WorldCom proposal.

**A. Adoption of the AT&T/WorldCom Proposal
Would Result in PSPs Being Grossly
Overcompensated.**

Section 276 of the Act requires that PSPs be compensated only on calls that are completed to the intended recipient.⁸ AT&T and WorldCom both admit that adoption of their proposal would result in PSPs being overcompensated.⁹ The Commission should not discount the size of the potential overcompensation. Samples performed by Global Crossing indicate that only approximately 65% of

⁶ AT&T at 3; WorldCom at 2-3; Global Crossing at 4-5.

⁷ Global Crossing at 7.

⁸ 47 U.S.C. § 276(b)(1)(A); *see also supra* at 2 n.5..

⁹ AT&T at 3; WorldCom at 2-3.

its retail traffic is actually completed to the intended recipient. For certain types of traffic -- prepaid and international, in particular -- the completion ratio is much lower. Adoption of the AT&T/WorldCom proposal -- while it does have the apparent benefit of administrative simplicity -- would result in PSPs being overcompensated. There is no justification for the Commission to sanction such a result.

**B. Adoption of the AT&T/WorldCom Proposal
Would Place FBRs at a Significant
Competitive Disadvantage.**

Under the Commission's new rules, the first interexchange carrier -- rather than the FBR -- is now directly responsible for the payment of per-call compensation. This will result in a significant increase in the potential liability for per-call compensation. Global Crossing has estimated that its potential exposure may rise by 300 to 400 percent. Virtually all of this increased exposure is due to calls that Global Crossing hands-off to FBRs and cannot determine if a call has been completed to the intended recipient.

No underlying carrier -- including Global Crossing -- will bear this risk. Rather, they will transfer that risk to their carrier-customers. This will substantially increase the costs of doing business by FBRs, particularly those that terminate substantial volumes of toll-free traffic. The FBRs, in turn, will likely be unable to pass all -- or even a substantial portion -- of these increased costs to their customers. Thus, adoption of the AT&T/WorldCom proposal would significantly injure -- if not put out of business -- a significant number of FBRs.

Such a result would be antithetical to the pro-resale policies that the Commission has fostered for at least thirty years. FBRs cannot rationally be expected to survive if they must bear this increased cost. The rules that the Commission had adopted tilts towards this result. Adoption of the AT&T/WorldCom proposal would ensure it. Forcing an entire class of competitive carriers to -- or over -- the brink of survival to benefit PSPs seems an unusually harsh result.

* * *

Rather than confer a windfall on PSPs at the expense of FBRs, as the AT&T/WorldCom proposal would accomplish, the Commission needs to address commercial reality. In its petition, Global Crossing provided a solution that does so -- namely the adoption of timing surrogates.¹⁰

II. THE COMMISSION SHOULD DEFER THE EFFECTIVE DATE OF THE NEW RULES UNTIL THE COMMISSION HAS ACTED UPON THE PETITIONS BEFORE IT.

The Commission's new rules have created -- as the petitions before it demonstrate -- substantial uncertainty and controversy. They threaten to render FBRs an endangered species and they have caused underlying carriers -- such as AT&T, WorldCom and Global Crossing -- to expend substantial sums to modify their systems to accommodate the new rules. In these circumstances, the Commission should suspend the effective date of the new rules until it has

¹⁰ Global Crossing wishes to modify its proposal in one respect. For calls destined to international locations, the timing surrogate that the Commission should adopt should be one minute rather than 25 or 45 seconds, as Global Crossing recommended for domestic calls.

acted upon the petitions before it. Given the stakes that confront the industry, such discretion is amply warranted.

Conclusion

For the foregoing reasons, the Commission should act upon the petitions in the manner suggested herein and in Global Crossing's petition for reconsideration and clarification.

Respectfully submitted,

/s/ Michael J. Shortley, III
Michael J. Shortley, III

Attorney for Global Crossing
Telecommunications, Inc.

180 South Clinton Avenue
Rochester, New York 14646
(716) 777-1028

October 9, 2001

Certificate of Service

I hereby certify that, on this 9th day of October, 2001, copies of the foregoing Comments on Petitions for Reconsideration, Clarification and/or Declaratory Ruling were served by first-class mail, postage prepaid upon the following:

Larry Fenster
WorldCom, Inc.
1133 19th Street, N.W.
Washington, D.C. 20036

Mark C. Rosenblum
Richard H. Rubin
AT&T Corp.
Room 1127M1
295 N. Maple Avenue
Basking Ridge, NJ 07920

Paul Brooks
Bulletins
125 State Street South
Kirkland, WA 98033

/s/ Michael J. Shortley, III
Michael J. Shortley, III